

EXHIBIT D

358

1
2 UNITED STATES DISTRICT COURT
3 SOUTHERN DISTRICT OF NEW YORK
4 -----X
5 INDEPENDENT ASSET MANAGEMENT,
6 LLC, and OLA HOMSTROM,
7
8 Plaintiff,
9
10 v. 1:07-CV-06431-JSR
11
12 DANIEL ZANGER,
13
14 Defendant.
15 -----X
16
17 July 11, 2008
18 10:55 a.m.
19
20 Continued deposition of GEORGE B.
21 SZELE, pursuant to notice and agreement, held
22 at the offices of Jones Day, 222 East 41st
23 Street, New York, New York, before Maureen
24 McCormick, a Shorthand Reporter and Notary
25 Public of the State of New York.

359

1
2 APPEARANCES:
3
4 BALESTRIERE, PLLC
5 Attorneys for Plaintiffs
6 225 Broadway, Suite 2700
7 New York, New York 10007
8 BY: CRAIG STUART LANZA
9 WILLIAM HOLLEMAN
10
11 JONES DAY
12 Attorneys for Defendant
13 222 East 41st Street
14 New York, New York 10017
15 BY: MICHAEL D. SILBERFARB, ESQ.
16
17 PRESENT:
18 DAVID LEIMGRUBER
19
20
21
22
23
24
25

360

1
2 STIPULATIONS
3
4 IT IS HEREBY STIPULATED AND AGREED,
5 by and between counsel for the respective parties
6 hereto, that all objections, except as to form,
7 are reserved to the time of trial.
8 IT IS FURTHER STIPULATED AND AGREED
9 that the deposition may be signed and sworn to
10 before any officer authorized to administer an
11 oath.
12 IT IS FURTHER STIPULATED AND AGREED
13 that the sealing and filing of the deposition be
14 waived.
15
16
17
18
19
20
21
22
23
24
25

361

1 G. Szele
2 GEORGE B. SZELE,
3 called as a witness, having been duly sworn,
4 testified as follows:
5 EXAMINATION
6 BY MR. SILBERFARB:
7 Q. Mr. Szele, you've been deposed twice
8 before in this matter.
9 Since your second deposition, you've
10 been recalled to testify about certain matters
11 you weren't prepared for at your first two
12 depositions.
13 Have you done anything to prepare
14 between April 17 at your last deposition and
15 today?
16 A. Yes.
17 Q. Can you tell me what you've done?
18 A. Going over IMs, gone over the specifics
19 of how you wanted the calculation on the damages,
20 and just in general looked over some of the
21 documents we've submitted.
22 Q. How much time would you say you spent
23 on that?
24 A. I don't know. I just don't know.
25 Q. Estimate?

402

1 G. Szele
 2 the -- I was listing my -- my comments on his
 3 violations.
 4 Q. Are these damages that are described in
 5 the spreadsheet based on the violations you have
 6 listed here?
 7 A. A portion of -- a portion of the 10
 8 million that's listed in this Exhibit 13 does
 9 include the overall effect of these violations on
 10 the shutdown of Independent Fund and Independent
 11 Asset Management.
 12 Q. But does it impact the loss of \$9.1
 13 million that you describe in the spreadsheet?
 14 A. Yes, I think in the sense that I have
 15 to explain to people Dan's unacceptable actions
 16 and what he -- you know, what he did.
 17 In that sense, it does affect those
 18 damages, because I have to explain to people why
 19 he had all his margins calls, why he had all the
 20 trading violations, why he took out the 5 million
 21 that he was supposed to leave in for minimum for
 22 five years, why he have improper wiring attempts,
 23 why his volatility and drawdowns exceeded the
 24 limits which he said he would stick to in his due
 25 diligence documents, and I can go on and on, if

403

1 G. Szele
 2 you want.
 3 Q. But you would just keep reading the
 4 list right here?
 5 A. I would.
 6 Q. If you took out any of these violations
 7 that you say that the \$10 million, which we'll
 8 get to later, is based on, partially this \$9.1
 9 million is based on, would that lower your
 10 calculations? If let's say --
 11 A. No, it would increase them.
 12 Q. Let's say under violations he didn't
 13 make any improper wiring attempts.
 14 A. Okay. I'm going to say this again.
 15 Dan did many, many things wrong that in a due
 16 diligence process I may have to explain to
 17 potential investors. Okay?
 18 I don't know if you are aware of what
 19 people have to go through when they're doing due
 20 diligence, but it's very extensive at times. I
 21 would have to sit down in front of a \$5 million
 22 fund to fund and have to explain to them
 23 everything about Dan, the audit, everything that
 24 he did wrong, and I'd have to explain to them why
 25 that happened, why didn't you have a different

404

1 G. Szele
 2 protocol there, where, you know, Dan had to tell
 3 you that he was violating these things, and then
 4 I explained to them, well, it's in our agreement
 5 that he was supposed to tell me everything, but I
 6 can't make the guy tell me everything.
 7 So all these things that I have to
 8 potentially go through, explain why the fund
 9 administrator is writing me a letter to either
 10 get rid of Dan or they'll get rid of me -- if I
 11 have to explain all these things in a due
 12 diligence process, it hurts. Okay? I can't
 13 tell -- I can't explain that in any other way.
 14 Q. We'll come back to this later.
 15 Let's go down to where it says damages
 16 down at the bottom. Do you see that?
 17 A. Yes.
 18 Q. On Exhibit 45?
 19 A. Yes.
 20 Q. Says one year earning potential for G,
 21 400,000. What does that mean?
 22 A. Well, my last professional position at
 23 Goldman Sachs I earned 400,000 in one year, so I
 24 just took one year of what I could have earned
 25 had I been doing maybe something else or, you

405

1 G. Szele
 2 know, if I wasn't thwarted by Dan again in
 3 various ways.
 4 I just took one year of what I would
 5 have earned typically at a Wall Street shop, and
 6 that's 400,000. Same thing.
 7 Q. Hold on, hold on. I'm just asking
 8 about that now.
 9 When did you leave Goldman Sachs?
 10 A. 2000.
 11 Q. Why?
 12 A. Mid 2000.
 13 Q. Why?
 14 A. Why? Various reasons.
 15 Q. Was it your decision to leave or did
 16 Goldman Sachs ask you to leave?
 17 A. Joint, joint decision.
 18 Q. Describe that.
 19 A. It was a joint mutual decision.
 20 Q. How did that come up?
 21 A. I don't recall how it came up. We --
 22 we came to a conclusion to jointly move on.
 23 Q. Who began the discussions about you
 24 jointly moving on?
 25 A. I don't know who began it.

422

1 G. Szele

2 A. Yes.

3 Q. IAM's potentially liable to this other

4 investor?

5 A. Or investors, right.

6 Q. What other investors is it potentially

7 liable to? That's what I'm asking.

8 A. I've already answered that. The

9 investor in '07 and Ola Homstrom.

10 Q. And other than those two, is there

11 anyone else?

12 A. I already said no. There were no other

13 investors.

14 Q. Let's pretend Ola Homstrom is not

15 around, okay? Take him out of the equation.

16 A. The only other investor was this 1.5

17 million investor in 2007 that came in when we

18 still had 5 million in the fund.

19 Q. And how did -- and is there any --

20 other than what you've stated already, is there

21 any other basis for the potential liability IFL

22 would have to this other investor as a result of

23 Dan's actions?

24 A. I don't know. I don't know. There

25 could be all sorts of potential liabilities

423

1 G. Szele

2 stemming from all that.

3 Q. Has either Ola Homstrom or the 2007

4 investor sued IAM?

5 A. No, they haven't sued us, but they have

6 questioned significantly why the fees were so

7 high, and we told them that fees were so high

8 because Dan pulled his money out, and they

9 weren't happy about that.

10 Therefore, they pulled out their

11 investment in IFL, causing us further damage

12 because of Dan as well.

13 If Dan doesn't pull out his 5 million,

14 that investor doesn't pull out his 1.5 million.

15 Damage begets damage begets damage begets damage.

16 It just rolls and rolls and rolls.

17 Q. If this 2007 investor and Ola Homstrom

18 never sued IAM, will IAM ever have to pay them a

19 cent as a result of a liability caused by Dan's

20 alleged actions?

21 MR. LANZA: Objection as to form.

22 A. Yeah, I -- maybe reword it or explain

23 to me what you're asking.

24 Q. If Ola Homstrom and the 2007 investor

25 never bring a lawsuit against IAM, will IAM have

424

1 G. Szele

2 to pay them anything, be required to?

3 A. I would assume not.

4 Q. So this loss only really comes up if

5 they sue?

6 A. It says potential liability.

7 Q. You believe Dan should have to pay for

8 potential -- IAM for potential liability?

9 A. Yeah, I do, because if there's a -- if

10 there's a suit there, why wouldn't he have to

11 cover it? It's because of him that it would be a

12 potential liability.

13 Q. Let's go to the next line down, shut

14 down of IFL \$500,000. What's that based on?

15 It's in your spreadsheet.

16 A. Shut down. Yeah, I mean, we -- again,

17 we spent well over \$500,000 in building the

18 Independent Fund, and Dan essentially shut it

19 down, so that's where that comes from, and we

20 spent well over half a million dollars to build

21 IAM over the years, and basically that was shut

22 down by him as well.

23 Q. Do you have any evidence, documentary

24 or otherwise, that show that \$500,000, how you

25 calculated it, where that \$500,000 number came

425

1 G. Szele

2 from?

3 A. I think if you looked at all the money

4 we spent over the years, expenses, you know,

5 marketing, building, the fund costs, everything,

6 if you combine everything, it's well over -- it's

7 over a million dollars to build the structures

8 and to maintain them and to, you know, just

9 operate.

10 MR. SILBERFARB: Once again, we would

11 ask for IAM's books. We don't have the

12 financial records, except for tax returns

13 that don't state any of these damages.

14 We are going to reserve all our rights,

15 if Mr. Szele tries to claim these damages,

16 because we don't have the evidentiary

17 support for them, despite the fact that --

18 THE WITNESS: Well, it's in the tax

19 returns, as well. The expenses are listed,

20 the debts listed, and I believe they

21 provided that.

22 MR. SILBERFARB: We'll go over that

23 later. We will reserve all rights. We

24 don't believe that all the information

25 that's been provided -- we would like a

426

1 G. Szele

2 backup and the best evidence from you guys.

3 MR. SILBERFARB: IFL we don't have the

4 tax returns for. We only have the tax

5 returns for IAM, so we want some backing for

6 why 500 was damage to IFL particularly.

7 MR. LANZA: 500,000.

8 MR. SILBERFARB: 500,000.

9 Q. Have those been produced?

10 A. Building -- I believe they have been.

11 I'm not sure in what form, but I think everything

12 that IAM extends out or spends in expenses is

13 related to the fund, as well as its office. You

14 know, everything -- IAM is a trading manager to

15 the fund, so basically IAM outlays the money.

16 You can just put a million under IAM

17 and strike the IFL. I just divided it because

18 they're both intertwined.

19 Q. So you're saying that the combined loss

20 to IAM is \$1 million?

21 A. I'm saying the combined expenditure

22 over the years for both IFL and IAM extends over

23 million, yeah.

24 Q. Are there financial documents to show

25 this from IFL in particular?

427

1 G. Szele

2 A. Again, the expenses that will list

3 certain things, I think it's in the tax returns

4 as well, just a basic breakdown of these debts

5 and expenses --

6 Q. Does --

7 A. -- that pertains to IFL.

8 Q. Does IFL have tax returns?

9 A. IFL has audits, not tax returns.

10 Q. Have we received all the audits from

11 IFL?

12 A. I've provided the audits.

13 MR. SILBERFARB: We would appreciate

14 the Bates numbers. We have asked for the

15 several times.

16 MR. HOLLEMAN: You've gotten the

17 audits, at least one of the audits in one of

18 previous depositions.

19 MR. SILBERFARB: We have the audits for

20 '05 and '06. We don't believe we have the

21 previous audits.

22 MR. HOLLEMAN: You have '04, as well.

23 MR. SILBERFARB: If he's claiming money

24 for damages that are based on the building

25 up of the company from '01 to '04, we want

428

1 G. Szele

2 those audits. They're very relevant here.

3 And again, we'll reserve all our rights

4 with regard to this.

5 MR. HOLLEMAN: Anything else that you

6 are --

7 MR. SILBERFARB: We'll talk about some

8 of the tax return issues later. We only got

9 partial tax returns, but we would like the

10 full documents. We don't feel that's crazy

11 to ask.

12 We also don't feel it's inappropriate

13 to ask for the backup of those tax returns,

14 but we'll talk about that later.

15 MR. LANZA: I'm unclear what you mean.

16 MR. SILBERFARB: We'll talk about it,

17 but it's referencing the accountant's letter

18 that there was backups that he sent back to

19 George, and we didn't receive any of that

20 for sure.

21 So in all those ways, these damages are

22 impossible for us to calculate.

23 Q. When you were calculating this million

24 dollars of loss to IAM and IFL combined, did you

25 use any documents to make these calculations?

429

1 G. Szele

2 A. Joe and I went over all the expenses

3 going back to when he started building this.

4 Q. How did you -- what did you -- so you

5 used this list that Joe had to calculate how much

6 you spent on IAM?

7 A. We have a ledger that he kept track of

8 expenses.

9 MR. SILBERFARB: We'd ask that you

10 produce the ledger, as well, and we'd ask

11 that you do it in a timely fashion, because

12 we only have a month until trial.

13 Again, we'll reserve all rights with

14 regard to this, because we can't question

15 him about those damages.

16 Q. Do you have a copy of this ledger, Mr.

17 Szele?

18 A. I'm pretty sure we have a copy of it,

19 yeah. I'll ask Joe to produce the ledger, if it

20 hasn't been produced.

21 MR. SILBERFARB: If not, we'd ask for

22 the Bates numbers again.

23 And these are the financial documents

24 we're talking about. We can't judge damages

25 without Mr. Szele providing those documents.

438

1 G. Szele

2 MR. LANZA: That's not all financial

3 documents.

4 MR. SILBERFARB: We want --

5 MR. LANZA: I mean, let's be clear. I

6 don't remember there ever being a request --

7 perhaps I'm wrong -- in which you requested

8 all financial documents.

9 When, you know, Joe Porco buys milk for

10 the refrigerator in 2003 and gets -- and

11 keeps hold of the receipt, surely you don't

12 want that. Do you?

13 MR. SILBERFARB: You know what? I have

14 it with me, but I can go back to our

15 document request, and we ask for all

16 financial documents.

17 MR. LANZA: All financial documents?

18 MR. SILBERFARB: Yes.

19 MR. LANZA: Well --

20 MR. SILBERFARB: That was our document

21 request. You didn't object to that

22 request.

23 MR. LANZA: I don't think any of us

24 have your document request.

25 MR. SILBERFARB: I don't have it right

439

1 G. Szele

2 now. I don't think we need to have this

3 argument on the record. It's pointless.

4 We're here to depose Mr. Szele. Let's

5 keep going with that. Hopefully everything

6 will be produced to us today, and then that

7 will end this conversation.

8 MR. LANZA: Just for the record,

9 everything is not going to be produced

10 today. It will be produced timely, but

11 obviously, you know, today we can't provide

12 it between now and six o'clock.

13 MR. SILBERFARB: The other issue is

14 that we received a spreadsheet with damages

15 that really break down the damages a lot

16 more today, not before today, but today, and

17 that's why a lot of these documents become a

18 lot more relevant, and I think you will

19 acknowledge that.

20 Q. Shutdown of admin is the next line on

21 your spreadsheet. What does that refer to?

22 A. Shutdown of the administrator. The

23 administrator, which takes plenty of time to

24 build a relationship with administrators, is shut

25 down based on Dan's actions, and I didn't even

440

1 G. Szele

2 place an amount on it here.

3 Q. Why not?

4 A. I left it blank. I chose not to put

5 anything on there right now.

6 Q. Shut down of SLKGS?

7 A. Spear Leeds Kellogg, Goldman Sachs.

8 The account was shut down at Spear Leeds.

9 Relationship is closed down there because of,

10 again, Dan's action. Didn't put an amount on it

11 for now, basically chose to leave the lump sum of

12 the million, and then for the IFL and the IAM,

13 since the admin and the SLK can be relevant to

14 IFL.

15 Q. Minimum debt IAM, \$800,000, what's that

16 based on?

17 A. Again is just the -- the seed capital

18 and debt that we incurred from -- from the --

19 over the series. That will be -- that will be on

20 the tax return as well, the debt.

21 Q. How did you calculate that?

22 A. From the -- from the tax stuff, from

23 the accountant.

24 Q. Let's go back to Exhibit 13. Says

25 IAM's unpaid debts. Page 3.

441

1 G. Szele

2 A. Yeah.

3 Q. The bottom.

4 In connection with defendant's actions

5 IAM incurred approximately \$690,595 in debts

6 which were rendered unable to be repaid due to

7 IFL being shut down by the prime broker and the

8 fund administrator.

9 A. Right. That was --

10 Q. Do you see that?

11 A. I do.

12 Q. Stop. Let me ask my question.

13 A. Yes.

14 Q. Is that number -- why is that 690,000

15 worth of unpaid debts on Exhibit 13, and now it's

16 \$800,000 of unpaid debts on Exhibit 45?

17 A. That's because it keeps increasing.

18 Q. What are IAM's debts right now?

19 A. Everything that we're getting under

20 debt more and more on a whole basis, on an entire

21 basis per the accountant. I think my accountant

22 said that you're up to -- you're up over 800 in

23 debt from the new one that's coming out now or,

24 you know, the return that he'll be working on

25 now, so there's even more -- even -- you know,

442

1 G. Szele
2 it's starting to compound with more debt
3 accumulating from -- and I have to look at why
4 he's -- you know, I have to look at the
5 accountant, why he's saying that.
6 Q. What year is this \$800,000 based on?
7 What years was this debt?
8 A. I think it's based on -- I think it's
9 based on -- I'm just not sure what exact point
10 it's based on.
11 Q. From '01 to '05?
12 A. I don't know. Some of it is based on
13 earlier years.
14 Q. Is it --
15 A. The point is that we can't pay anything
16 back, because Mr. Zanger has shut us down.
17 That's why it's in there.
18 Q. Is this debt based on IAM's total debt
19 throughout the period of IAM's existence?
20 A. Yes. Everything that's minimum to IAM
21 refers to IAM's existence in building and, you
22 know, seed capital that we had.
23 Q. You believe Dan should pay off all of
24 IAM's debts for its entire existence, despite the
25 fact Dan only worked there for two years, or had

443

1 G. Szele
2 the agreement with IAM for two years?
3 A. I think Day should pay off much more
4 than that, because he shut down something that
5 could have created a lot more revenue for us.
6 Q. Is there any other basis, other than
7 this -- how did you calculate this \$800,000?
8 A. I just said, it's through the
9 accountant, through his -- his numbers, the debt
10 numbers on the returns.
11 Q. The accountant says right now you have
12 \$800,000 in debt.
13 A. It's around there. I round things off.
14 Q. When did you speak to the accountant?
15 A. When did I speak to the accountant? I
16 speak to him on and off.
17 Q. When did he tell you there was \$800,000
18 of debt?
19 A. I don't know exactly. I have to check.
20 It's on -- I think I saw it on one of the return
21 sheets on the accountant's sheets.
22 Q. Is that number a precise number?
23 A. It's approximate.
24 MR. SILBERFARB: We'd ask if there is
25 an accounting sheet that we haven't seen,

444

1 G. Szele
2 that it be produced. It's an approximate
3 number, \$800,000.
4 THE WITNESS: Approximate -- it's an
5 approximate number.
6 Q. Round up or down?
7 A. It's an approximate number. I don't
8 know. I don't know if I rounded up or down.
9 Q. So you could have rounded up? It could
10 be less than that?
11 A. Maybe could be 10,000 less, could be
12 10,000 more. I don't know. I have to check.
13 Again, you want the exact number -- in fact,
14 we'll produce the accountant's papers that, you
15 know, if we haven't already produced it -- I
16 think we have. It's already detailed that.
17 Q. Minimal poten -- I think that's a
18 spelling --
19 A. Minimum potential on George's trading.
20 Q. We'll just accept that as being what
21 it's supposed to say. It says \$1 million.
22 What's that based upon?
23 A. That's based on -- that was just based
24 on a hundred percent gain, and now I'm at a 200
25 percent gain since February '05, but that was

445

1 G. Szele
2 based on a hundred percent gain and the fees we
3 would have earned off a 20 percent performance
4 fee, if we just had brought in 5 million into
5 that trading strategy.
6 Q. I'm confused. Explain that again. How
7 did you calculate this precisely?
8 A. Based on a hundred percent return on 5
9 million, take it 20 percent performance fee.
10 That's how it basically comes up.
11 Q. Where does the 5 million come from?
12 A. The 5 million is an amount we could
13 have traded on Dan's money or we could have
14 raised on our own to trade also that we could
15 have raised money on our own or we could have
16 done it with Dan's 5 million if he wanted to
17 hedge his own portfolio, which he thought he
18 wanted to do, which he was starting to do with
19 the hundred K, he started to do with a hundred K,
20 so he was obviously wanting to have me trading
21 more and more of his capital to hedge.
22 Q. Is this money based on performance fees
23 and --
24 A. Yes.
25 Q. -- and management fees?

490

1 G. Szele

2 Q. Is he a partner in IAM?

3 A. He was not.

4 Q. What did he get back? What did he get

5 back?

6 A. He was a lender. He would have

7 probably participated in fees of upside sharing

8 of some sort.

9 Q. You see up in Column 1, cash says

10 \$172,964?

11 A. Yeah, I see that.

12 Q. The year before, IAM had \$15,134 in

13 cash. Can you explain why there was such a jump?

14 A. I cannot. You have to ask the

15 accountant.

16 Q. And then if you go down back to

17 Schedule M 2, distributions for that year,

18 \$65,373 to you and Mr. Porco; is that correct?

19 A. I think that's probably distributed to

20 Joseph and I.

21 Q. What percentage of the distributions

22 from the partnership would you get as compared to

23 Mr. Porco?

24 A. I think it was pretty much 50-50.

25 Q. Capital contributed that year in

491

1 G. Szele

2 partners contributed \$31,884, is that correct,

3 No. 2, Schedule M 2?

4 A. That's what it says, yes.

5 Q. And the net income or the income loss

6 was \$132,070 for that year?

7 A. Looks like it.

8 Q. Let's go to 2005, next page. The cash

9 Line No. 1 on Schedule L -- again, this is the

10 Form 1065 for 2005. It's Bates numbered 006510,

11 IAM Bates number.

12 The cash goes down from -- on hand goes

13 down from 172,964 to 45,956. Is there any reason

14 that that happened, in your mind?

15 A. I don't know why. You have to ask the

16 accountant.

17 Q. The debt went up from \$822,562 to

18 \$872,987 in that year; is that correct?

19 A. Looks like it.

20 Q. And do you know why that went up

21 \$50,000?

22 A. I do not. Question for the accountant.

23 Q. This is a year that Zanger gave

24 \$100,000 of working capital to IAM, correct,

25 2005?

492

1 G. Szele

2 A. Actually he gave 100,000 in '04.

3 Q. Okay.

4 A. End of '04.

5 Q. Can we go back to '04 for a second

6 then? Do you know where that would be reflected

7 on this document?

8 A. I do not. Could be in that mortgage

9 Section 19.

10 Q. Go back to '05. Says guaranteed

11 payments other than health insurance under No. 3

12 and M 1, \$149,900. Do you know what that's for?

13 A. I do not.

14 Q. Did you take out any money for yourself

15 and Mr. Porco during 2005?

16 A. I do not recall.

17 Q. Could that \$149,900 be salaries to you

18 and Mr. Porco during that year?

19 A. I don't know. It could be.

20 Q. Do you have any reason to believe

21 that's not what that says?

22 A. Again, I don't know what that is. It's

23 a question for the accountant.

24 Q. And that year, the income loss No. 9

25 was \$91,480, correct?

493

1 G. Szele

2 A. That's what it says there, yeah.

3 Q. So again, for the -- IAM took a loss in

4 '05, correct, big loss, \$91,480?

5 A. Income loss is negative 91,480.

6 Q. Let's turn on to the next page, 2006.

7 A. Just for the record, you were asking

8 where we got that 800,000 number from down here.

9 That's where I think we got that 800,000 number

10 from.

11 Q. Okay.

12 A. Okay?

13 Q. So as of the end 2004 -- let's go back

14 to the 2004 one. It's Bates numbered IAM 0065.

15 Says -- can't really read that. It's page No. 8

16 of 10?

17 A. Yeah.

18 Q. That says \$822,562 in Column 19 under

19 debts owed by IAM, correct?

20 A. 822,562, end of year, yeah.

21 Q. So before Dan Zanger even got involved

22 with IAM, IAM already had debts in excess of

23 \$800,000, correct?

24 A. I don't think that's correct, because I

25 think the hundred thousand is in that 822 of

494

G. Szele

1 Dan's money that he put in.

2 Q. So even assuming that, which I won't
3 concede here, even assuming that that hundred
4 thousand is in there, IAM going into its
5 agreement with Dan Zanger already had debt of
6 \$722,562?

7 A. We'd have to check with the accountant,
8 but that's possible.

9 Q. IAM did have at least significant debt
10 at that point?

11 A. If you say so.

12 Q. Let's turn to 2006. The next one, I
13 think it's IAM 006511. It's the Form 1065 for
14 2006.

15 A. Yes.

16 Q. See at top it says cash 14,250, No. 1?

17 A. Which page are you on?

18 Q. On Page 10 of 10.

19 A. Okay. I see that.

20 Q. So that cash on hand went down from
21 45,956 to 14,250, between 2005 and 2006?

22 A. It looks like it, yes.

23 Q. Is there any reason that that went down
24 that you know of?

495

G. Szele

1 A. No, I do not.

2 MR. SILBERFARB: You guys mind if we
3 take a five-minute break?

4 MR. LANZA: Sure.

5 (Recess taken.)

6 Q. Now we are looking at 2006. You go
7 down to No. 3 in Schedule M 1, says guaranteed
8 payments, 164,150. Do you see that?

9 A. Yes.

10 Q. And do you know what that stands for?

11 A. I do not. I'm assuming it's probably
12 some -- some draw.

13 Q. Some salary to you and Mr. Porco?

14 A. Some draw, yeah.

15 Q. And then if you look at income loss,
16 right, No. 59, says 107,414, but there's no
17 negative. This year you made money, 2006?

18 A. Okay.

19 Q. Is that true?

20 A. Looks like it.

21 Q. Is there any reason to believe it's not
22 true?

23 A. I do not.

24 Q. At the end of that year, despite the

496

G. Szele

1 fact that IAM made money, it had less cash on
2 hand than it did the year before, correct?

3 A. If you say so. Again, I'm not an
4 accountant. I can't give you details on this
5 stuff.

6 Q. Look at No. 19 on Schedule L. IAM's
7 debt was now \$864,899 the end of that year?

8 A. Okay.

9 Q. That went down \$8,000 from the previous
10 year; is that correct?

11 A. Looks like it.

12 Q. Yes or no?

13 A. It looks like it went from 872,987 to
14 864,890.

15 Q. Do you know why the debt went down that
16 year?

17 A. I do not.

18 Q. What year did Dan Zanger put \$50,000 of
19 additional working capital under the addendum
20 agreement into IAM?

21 A. I believe it was '05.

22 Q. Let's turn back to '05 for one second
23 here, and that \$50,000 is probably reflected in
24 the fact that IAM's loans or money owed went
25

497

G. Szele

1 from 822,000 approximately to 872,000,
2 approximately. That's probably that \$50,000
3 there, correct?

4 A. Could be.

5 Q. What else could it be?

6 A. I don't know.

7 Q. But --

8 A. It could be that, though.

9 Q. Did you think that's it, in your
10 opinion? I know you're not an accountant.

11 A. Could be, yeah, it could be that.

12 Q. Good chance?

13 A. Yeah, it's a good chance that that's
14 probably it.

15 Q. When did Dan provide IAM with the
16 \$50,000 for RCA Capital or RC -- how is that?

17 A. RCA.

18 Q. RCA?

19 A. When did Dan provide that? That was
20 '06.

21 Q. '06? Do you see that reflected in the
22 '06 statement anywhere? That's Page 10 of 10.

23 A. I don't know where that would be
24 reflected.

462

1 G. Szele

2 message.

3 Q. When did the funds -- when did Dan

4 start trading in the funds?

5 A. He got the money in by the end of

6 February and early March.

7 Q. So there's a month difference in there?

8 In that month he could have lost that 35 percent,

9 right.

10 A. No, January and February is what we

11 missed out on. The first two months is what we

12 missed out on. His money was in by the end of

13 February, early March so --

14 Q. The date of the IM --

15 A. February 4 of '05. Okay?

16 Q. So between February 4 of '05 and

17 February 28, '05, Dan potentially could have lost

18 that 35 percent?

19 A. Some -- some money was in -- already

20 in -- I think, 2 million. I gotta get the exact

21 dates, but some money was in by early February,

22 and some money was in by early March, so we --

23 you can put March in there, but I think he was up

24 in March as well, so I think it's irrelevant. We

25 looked at that.

463

1 G. Szele

2 We looked at what we would have -- we

3 looked at what we would have earned if he had his

4 money in there from January 1 and a 38 percent

5 approximate difference. I mean, we have the

6 numbers, but you can look into it more, if you

7 want.

8 Q. Just so I know, on this document we're

9 looking at in Exhibit 8, it says, "Y-T-D

10 portfolio change percent," right in that column,

11 on Page No. 6?

12 A. Okay. What I can tell you for sure is

13 that any P&L number on the Goldman spreadsheet

14 report is not taking out any fees for anything.

15 That's for sure.

16 Q. Again, all I'm asking you is this:

17 What percentage year to date was the portfolio

18 for IFL up at the end of -- for the year to date

19 at the end of December '05?

20 A. Looks like 84.38 gross. That's gross

21 number.

22 Q. That's a gross number?

23 A. Right. That in my opinion is

24 definitely a gross number, because Goldman Sachs

25 does not take out fees, and they're just

464

1 G. Szele

2 calculating P&L.

3 MR. SILBERFARB: Why don't we take

4 lunch right now.

5 (Discussion off the record.)

6 Q. There are a couple of other things that

7 you didn't talk about in your spreadsheet. I'm

8 wondering from Exhibit 13, which was your

9 original damages calculations -- I'm just

10 wondering if those are included in the

11 spreadsheet, and I'll just go through them pretty

12 quick.

13 First one is information technology

14 costs. In connection with -- it's on Page 3.

15 In connection with the management of

16 IFL, IAM incurred approximately \$20,000 cost in

17 implementing the information technology necessary

18 to operate a hedge fund. Because defendant's

19 action shut down IFL, IAM was unable to realize

20 the value of information technology investment.

21 A. Yes.

22 Q. Is that included in the spreadsheet?

23 A. No.

24 Q. It's not? It's not included in the

25 money IAM spent to start its company, the

465

1 G. Szele

2 \$500,000?

3 A. If you want to include it, you can

4 include it. Network synergy, it's based on --

5 it's based on our -- the technology of running

6 the computers, the softwares, the trading

7 analysis.

8 It's basically software and technology

9 support type stuff, so it's possible you could

10 put that into the -- into the IAM expenses.

11 Q. Do you have any -- do you have any

12 documents to back that \$20,000 up, that that's

13 how much you spent?

14 A. It's a very minimum estimate over the

15 years of what we spent with this company network

16 synergy and CQG.

17 I do have expenses on net synergy and

18 CQG. I mean --

19 Q. Do we have those?

20 A. I provided a list of -- I'm pretty sure

21 I provided a list of these costs. If they're

22 not, will be on this ledger of expenses that my

23 partner would have.

24 Q. So they're included in the 500,000 or a

25 million dollars that IAM and IFL have expended,